

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1, 4-8 and 10-27 are pending in the present application. Claims 1 and 14 are independent.

In the outstanding Office Action, claims 1, 4-8 and 10-27 were rejected under 35 U.S.C. § 103(a) as unpatentable over Lamkin (U.S. Patent No. 7,369,661) in view of Briscoe (U.S. Patent No. 7,216,149).

Applicant acknowledges with appreciation the telephone discussion between the Examiner and Applicant's representative on January 28, 2011. During the discussion, the Examiner agreed that the specification of the newly cited Lamkin reference does not provide support for the claims of Lamkin that were relied upon in the current rejection. The Examiner agreed to withdraw the Lamkin reference as a basis of rejection upon receiving a formal reply from Applicant.

As noted in the telephone discussion of January 28, 2011, Lamkin is an improper reference upon which to base a rejection. A comparison of Applicant's originally filed claims and Lamkin's claims reveal that Lamkin copied Applicant's claims verbatim.

Also as noted in the telephone discussion of January 28, 2011, the rejections based on Lamkin only cite to Lamkin's claims. Applicant directs the Examiner to *In re Benno*, 226 USPQ 683, 786 F.2d 1340, which notes, *inter alia*:

The scope of a patent's claims determines what infringes the patent; it is no measure of what it discloses. A patent discloses only that which it describes, whether specifically or in general terms, so as to convey intelligence to one capable of understanding....Danti's claim 1 does not disclose any structure additional to what the Danti specification discloses. For the above reasons, we hold that the board erred in relying on Danti's claim 1 in deciding that appellant's

claims would have been obvious from that reference alone and also in reaching that conclusion.

In other words, it is improper to base a rejection on the contents of a patent's claims. The rejection must be based on the disclosure of the specification, not merely the claims. In rejecting Applicant's claims, the Official Action exclusively cites to Lamkin's claims for a number of features recited in Applicant's claims. Applicant submits that none of Applicant's features allegedly found in Lamkin's columns 115-116 are disclosed in the specification of Lamkin. If the Lamkin reference is not removed as prior art in the next action, Applicant requests citations to Lamkin's specification (and not Lamkin's claims) for each and every feature recited in Applicant's claims.

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Michael E. Monaco, Reg. No. 52,041, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§ 1.16 or 1.147; particularly, extension of time fees.

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Respectfully submitted,

By 

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